

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

04 10475 MLW

ILLINOIS UNION INSURANCE COMPANY
as subrogee of CITY OF LAWRENCE
80 Bodwell Street
Lawrence, MA 01841

Plaintiff,

v.

THE VIKING CORPORATION
210 North Industrial Park Road
Hastings, MI 49058

Defendant.

MAGISTRATE JUDGE Lein

CIVIL ACTION NO.

JURY TRIAL DEMANDED

RECEIPT # 57419
AMOUNT \$ 1.00
SUMMONS ISSUED yes
LOCAL RULE 4.1 +
WAIVER FORM +
MCF ISSUED +
BY DPTY. CLK. ECM
DATE 3/9/04

COMPLAINT

Plaintiff, Illinois Union Insurance Company, by and through its counsel, Patrick J.

Loftus, III, and Cozen O'Connor, upon information and belief, hereby avers, as follows:

THE PARTIES

1. At all times material hereto, Plaintiff, Illinois Union Insurance Company [hereinafter "Illinois Union"], was a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located in Chicago, Illinois.

2. At all times material hereto, Plaintiff Illinois Union was engaged in the business of issuing property insurance and was duly authorized to issue policies of insurance within the Commonwealth of Massachusetts.

3. At all times material hereto, Defendant, Viking Corporation [hereinafter "Viking"], was a corporation organized and existing under the laws of the State of Michigan, with its principal place of business in Hastings, Michigan.

4. At all times material hereto, Defendant Viking was engaged in the business of manufacturing, supplying and/or distributing fire suppression sprinklers and related equipment.

JURISDICTION AND VENUE

5. The jurisdiction of this Court is proper pursuant to 28 USC §1332 as this action is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

6. Venue is proper in this district pursuant to 28 USC §1391 as the events or omissions giving rise to the claims at issue occurred within this district and Defendant is subject to personal jurisdiction within the district.

FACTUAL ALLEGATIONS

7. At all times material hereto, the City of Lawrence owned the property located at 80 Bodwell Street, Lawrence, Massachusetts, where it operated the George A. Gillemette Elementary School.

8. At all times material hereto, Plaintiff Illinois Union insured the City of Lawrence's property interests at the Gillemette Elementary School.

9. Before October 5, 2003, Defendant Viking manufactured, distributed and/or sold sprinkler heads, including a sprinkler head that was installed in the Gillemette School, in or near Room 216.

10. On or about October 5, 2003, Defendant Viking's sprinkler head failed and discharged water, thereby causing extensive damage to the Gillemette Elementary School.

11. Given the damage, the City of Lawrence submitted a claim to Plaintiff Illinois Union and, pursuant to the terms and condition of its policy of insurance, Plaintiff Illinois

Union has paid to the City of Lawrence an amount in excess of \$75,000, representing the fair and reasonable value and cost of the resulting damage, as covered under the applicable policy.

12. To the extent of its payments, Plaintiff Illinois Union is subrogated to the rights of its insured, the City of Lawrence.

COUNT I - BREACH OF WARRANTY

13. Plaintiff incorporates the preceding paragraphs, by reference.

14. Defendant Viking failed to provide a sprinkler head that was fit and adequate for its foreseeable and intended use and free from defects in its design, manufacture, assembly and/or warnings and instructions, which constitutes a breach of its warranties and obligations, for which Defendant Viking is liable in warranty and also strictly liable in tort.

15. As a direct and proximate result of the above breaches of warranty, the water discharge occurred and resulted in extensive damage to the City of Lawrence's property.

WHEREFORE, Plaintiff, Illinois Union Insurance Company, as subrogee of the City of Lawrence, demands judgment against Defendant Viking Corporation, in an amount in excess of \$75,000, together with interest, costs, reasonable attorney's fees, interest and such other relief as the court deems just and appropriate.

COUNT II - NEGLIGENCE

16. Plaintiff incorporates the proceeding paragraphs, by reference.

17. The sprinkler head's failure and resulting water discharge were caused by the negligence, carelessness, recklessness and/or negligent omissions of Defendant Viking, acting by and through its agents and employees, acting with the scope and course of their employment, in:

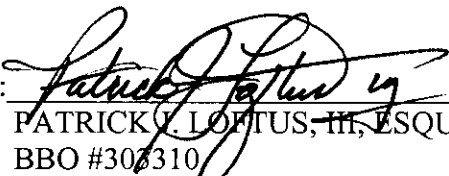
- (a) causing or allowing an improperly designed, manufactured and/or assembled sprinkler head to be placed into the stream of commerce;

- (b) failing to promptly recognize and/or properly warn of dangerous conditions within the sprinkler head;
- (c) failing to provide proper and adequate warnings and instructions with its sprinkler head;
- (d) failing to use proper and safe components and materials in the design and construction of the sprinkler head;
- (e) failing to utilize proper and adequate internal control and/or inspection procedures;
- (f) otherwise causing or allowing the sprinkler head to fail; and
- (g) otherwise failing to use due care, as may be disclosed for the discovery process.

18. By reason of the above negligence, the water discharge occurred and resulted in extensive damage to the City of Lawrence's property.

WHEREFORE, Plaintiff Illinois Union, as subrogee of the City of Lawrence's, demands judgment against Defendant Viking Corporation, in an amount in excess of \$75,000; together with interest, costs, reasonable attorney's fees, interest and such other relief as the court deems just and appropriate.

Respectfully submitted,

BY: 
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